

Ecuador – Peru Endgame

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Introduction

Monday, 26 October 1998, marked a truly historic moment in the diplomatic and commercial intercourse of Ecuador and Peru, neighbouring Latin American states whose official relations date back to the early 1830s. On that date, President Jamil Mahuad Witt of Ecuador and President Alberto Fujimori of Peru concluded a comprehensive peace agreement, ending the longest-standing boundary dispute in the Americas.

The centrepiece of the *Brasilia Agreements*, so-called because they were signed in the Brazilian capital, was the *Presidential Act of Brasilia*, countersigned by the presidents of Argentina, Brazil, and Chile, together with a personal representative of the president of the United States. In addition to the presidential act, the package of accords concluded in Brasilia included a *Treaty of Trade and Navigation* and a *Treaty of Frontier Integration* together with several other agreements. Collectively, the *Brasilia Agreements* brought a fair and honourable solution to a boundary dispute which has frustrated diplomats in and out of Ecuador and Peru for decades.¹

The 1942 Rio Protocol

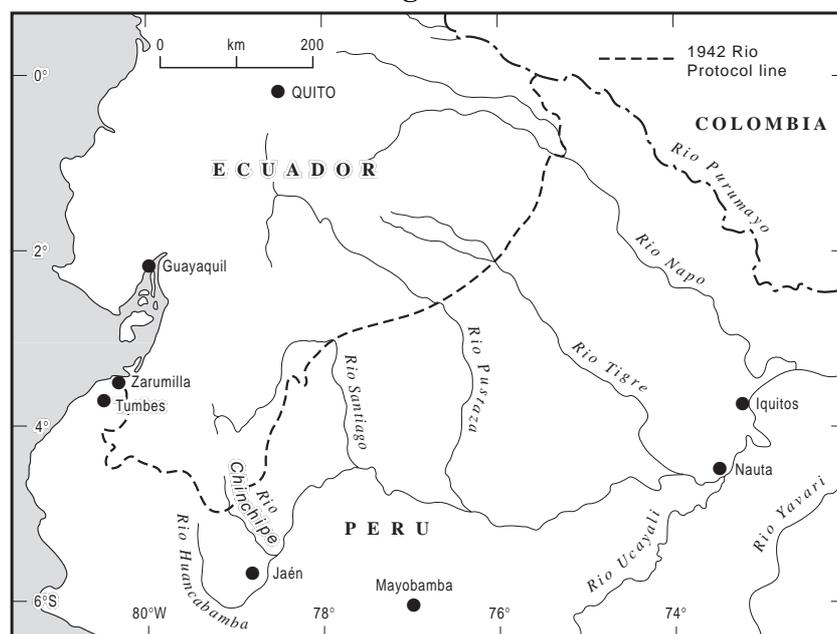
The Ecuador-Peru dispute was thought to have been resolved in 1942 with the conclusion in Rio de Janeiro of a *Protocol of Peace, Friendship, and Boundaries*, known subsequently as the *Rio Protocol* (Figure 1). From almost any perspective, the *Rio Protocol* evidenced a unique approach to the resolution of a boundary dispute. Acting in the role of mediators, four so-called ‘friendly powers’, Argentina, Brazil, Chile, and the United States first brought the governments of Ecuador and Peru together and then persuaded them to sign the agreement. Once the belligerents had signed the protocol, the four friendly powers, assuming the role of guarantors, also signed the agreement, agreeing to collaborate, as required, to resolve disagreements during the demarcation of the boundary. This multilateral

commitment to a bilateral settlement clearly separated the *Rio Protocol* from other boundary agreements inside and outside Latin America.²

The *Rio Protocol* also differed from other boundary settlements in that it contained both a procedure to resolve the dispute and the outline of an actual boundary line. For example, in the area of the Cordillera del Cóndor, the agreement described a boundary line running from the Quebrada de San Francisco, the *divortium aquarum* between the Zamora and Santiago Rivers, to the confluence of the Santiago and Yaupi Rivers. In addition, the terms of the *Rio Protocol* included an ongoing role for the four guarantors until such time as a definitive demarcation of the Ecuador-Peru boundary had been completed (Article 5).

While the agreement did not contain a provision for arbitration, any disagreements arising from its execution were to be settled by the parties concerned with the assistance of the guarantors (Article 7). Finally, the protocol allowed for Ecuador and Peru, with the collaboration of the guarantors, to grant reciprocal concessions in order to adjust the frontier to take account of geographical conditions (Article 9).³ In effect, the *Rio Protocol* institutionalised the role of outsiders in the Ecuador-Peru dispute since it assigned the four guarantors an ongoing role of collaboration and assistance even as

Figure 1



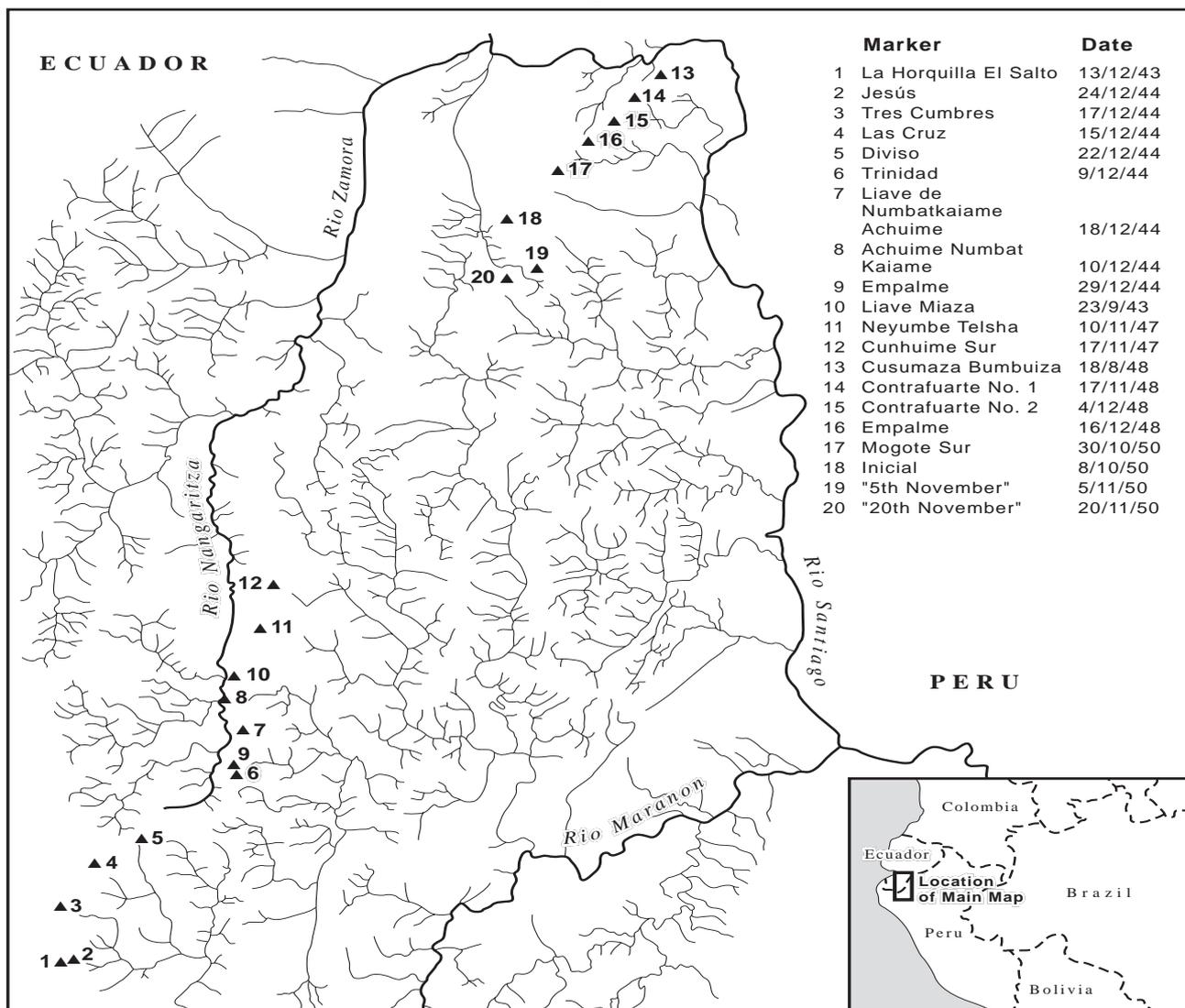
the ultimate responsibility for a definitive settlement rested with Ecuador and Peru.⁴

Members of the Ecuador-Peru Mixed Boundary Demarcation Commission laboured after 1942 to demarcate the boundary outlined in the *Rio Protocol*. While differences in interpretation inevitably arose, most were soon settled with the full approval of both Ecuador and Peru by Captain Braz Dias de Aguiar, a Brazilian naval officer and technical expert appointed by the guarantors to study and resolve such disputes. The single most important exception was a remote border section located in the Cordillera del Cóndor, the connecting link between the eastern and western sectors of the new boundary. In early 1947, a map based on a recently completed aerial survey of the region by the United States Army Air Force was delivered to the governments of Ecuador and Peru. To the surprise of some observers, the Cenepa River, previously thought to be a relatively short stream of

little consequence, was revealed to be a 118 mile (190km) independent fluvial system located between the Zamora and Santiago Rivers. As a result, there was not one but two *divortium aquarum* between the Zamora and Santiago Rivers. Hence, Article 8 of the *Rio Protocol*, which spoke of a single *divortium aquarum*, was shown to contain a geographic flaw.⁵

Ecuador was slow to respond officially to the new map of the Cordillera del Cóndor; however, in late September 1948, the government in Quito ordered Ecuadorian representatives on the Mixed Boundary Demarcation Commission to stop work north of the Cunhuime Sur marker (Figure 2) on the grounds the new map showed there was no single watershed between the Zamora and Santiago Rivers. Consequently, the terms of the *Rio Protocol* could not be applied literally, a circumstance which Ecuadorians began to suggest threatened the permanency of the entire agreement. Three years

Figure 2



later, Ecuadorian President Galo Plaza Lasso stated that the non-existence of a frontier line in the Santiago-Zamora zone made it necessary for Ecuador and Peru to negotiate a new frontier line. Significantly, he added that his government could not accept any boundary in this sector which did not recognise Ecuador's inalienable right to a sovereign outlet to the Amazon River through the Marañón. Less than a decade later, Juan Velasco Ibarra, a three-time president of Ecuador, initiated in 1960 a controversial campaign for re-election in which he asserted that the *Rio Protocol* could not be executed because of the geographic flaw in the agreement in the region of the Cordillera del Cóndor. Victorious in the presidential elections, Velasco in August 1960 declared the *Rio Protocol* null and void.⁶

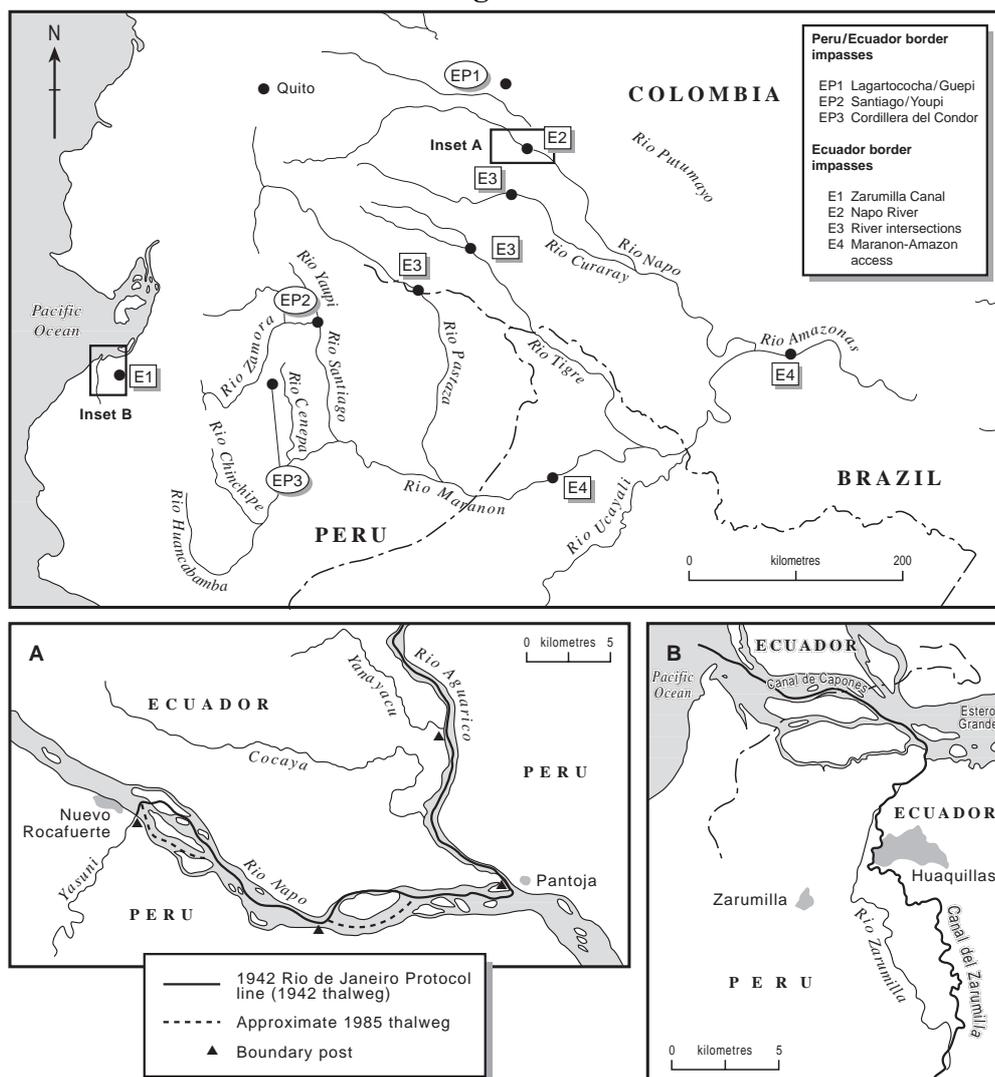
Events over the next three decades have been discussed in detail elsewhere and can be summarised here. In short, there was little change in the public policy of either party to the Ecuador-Peru boundary dispute. Ecuador delayed a settlement in the apparent hope that Peru could be induced to alter the provisions of the *Rio Protocol* to permit Ecuador an outlet to the Amazon via the Marañón River. In turn, Peru continued to maintain that no problem existed with the terms of the protocol. On the contrary, the only outstanding issue, in the eyes of Peruvians, was to complete the demarcation of the boundary in the Cordillera del Cóndor sector. In early 1981, the ongoing tension between opposing military forces in the disputed zone led to skirmishes in and around Paquisha. While a cease-fire was eventually arranged, the armed forces of Ecuador and Peru again clashed in the Cordillera del Cóndor sector in January 1995 in what proved to be the most serious round of fighting since the outset of the dispute.⁷

End of the Beginning

The January 1995 clashes in the Cordillera del Cóndor led to the conclusion one month later of the *Itamaraty Peace Declaration (Declaración de Paz de Itamaraty entre Ecuador y Perú)* which in turn led to a new round of talks between Ecuador and Peru. The six-point framework of the Itamaraty accords, in addition to cease-fire and demobilisation provisions, provided for bilateral talks between Ecuador and Peru aimed at resolving their border dispute.⁸

In the end, fulfilment of the military provisions of the *Itamaraty Peace Declaration*, i.e. agreement to a cease-fire, separation of forces, and the establishment of a demilitarised zone, took almost a year. Consequently, the bilateral talks aimed at a final resolution of the border dispute did not begin until January 1996. The most significant outcome of this initial round of talks was an agreement to put down in writing for the first time since 1948 the substantive differences (*impasses subsistentes*) or

Figure 3



border impasses of both Ecuador and Peru concerning the boundary (Figure 3).⁹

The Ecuadorian government tabled four substantive differences. First, it referred to the partial inexecutability of the *Rio Protocol* due to the absence of a watershed between the Zamora and Santiago Rivers. In so doing, Quito reinforced its claim to free and sovereign access to the Amazon River via the Marañón. Second, it highlighted border demarcation problems between the Cusumaza-Bumbuiza boundary marker and the Yaupi River, an area it claimed that was not a part of the Cordillera del Cóndor, as well as in the Lagartococha-Güepi sector. Third, it alluded to the navigation problems produced by the intersection of rivers by survey lines, identifying three areas in the Curaray, Pastaza, and Tigre zones, as well as a problem on the Napo River in the Yasuní-Aguarico sector. Finally, Ecuador listed the Zarumilla Canal, dividing Ecuador and Peru on the Pacific coast, where silt blockage of the water flow had generated persistent water management problems.¹⁰

The Peruvian government prefaced its remarks on substantive differences with a forceful statement reiterating its position that any long-term resolution of its dispute with Ecuador meant completing the demarcation of the boundary line, as established in Article 8 of the *Rio Protocol*, in conformity with its complementary provisions and the award of Captain Braz Dias de Aguiar. It then listed two sectors of the border where it felt substantive differences existed. First, in the Lagartococha sector, Peru highlighted the source of the Lagartococha River-Güepi River as a problem area. Second, in the Cordillera del Cóndor, Peru listed the sectors between boundary marker Cunhuime Sur and boundary marker 20 de Noviembre as well as between boundary marker Cusumaza-Bumbuiza and the confluence of the Yaupi and Santiago Rivers.¹¹

Following prolonged substantive discussions, Ecuador and Peru agreed in the *Declaration of Brasilia*, concluded in November 1997, to address the following four issue areas in an effort to reach a comprehensive agreement:

1. Treaty of Trade and Navigation;
2. Comprehensive Agreement on Border Integration;
3. Fixing the Common Land Border; and,
4. Bi-national Commission on Measures of Mutual Confidence and Security.

A January 1998 meeting in Rio de Janeiro produced a work plan to implement the *Declaration of*

Brasilia in which Ecuador and Peru agreed that four separate commissions would work simultaneously in Brasilia, Buenos Aires, Santiago, and Washington, D.C. to resolve the above four issue areas. In addition, a special commission was created to address the water management issues associated with the Zarumilla Canal.¹²

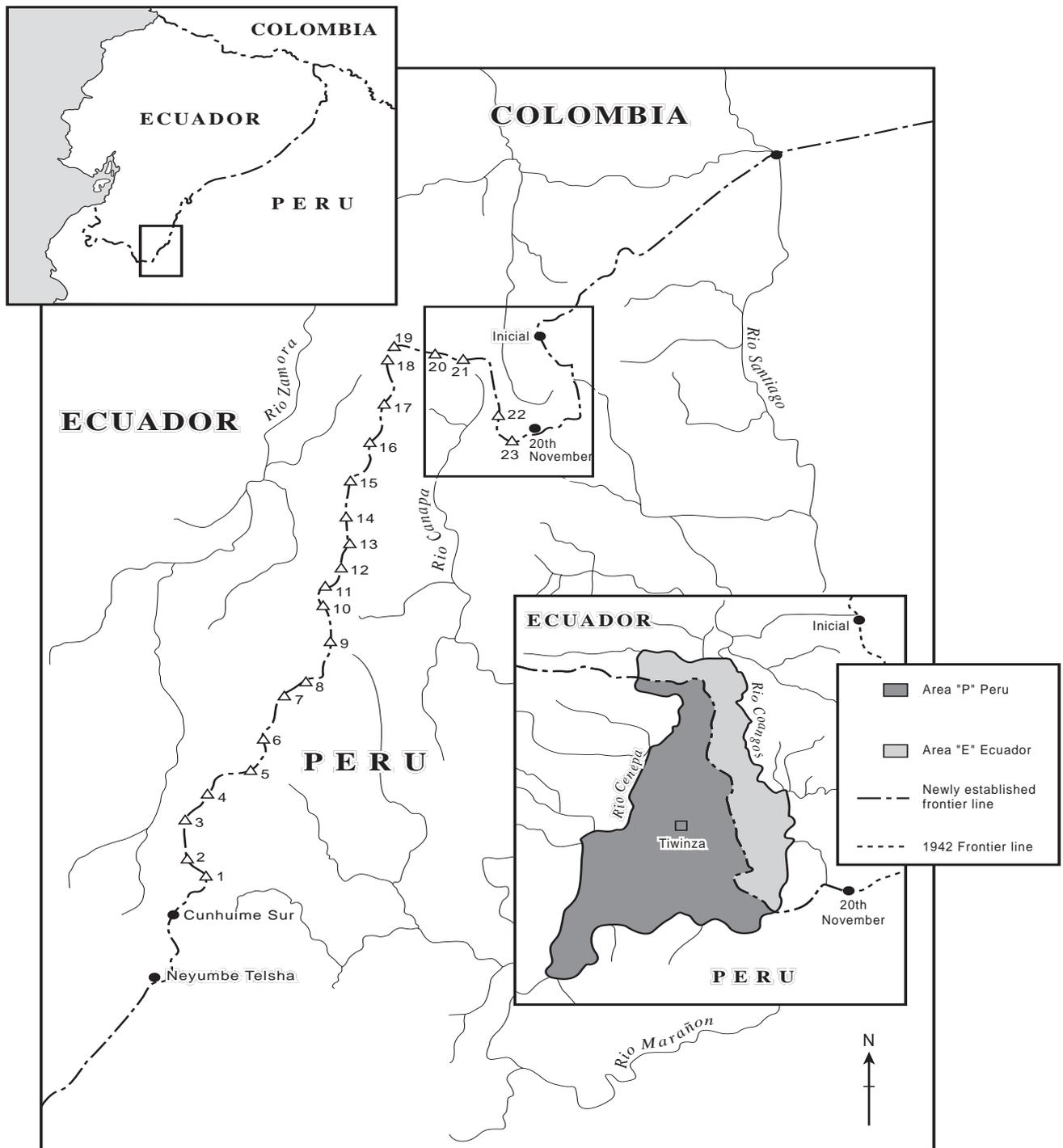
While Ecuador and Peru quickly reached agreement on peripheral issues like the administration and utilisation of the waters of the Zarumilla Canal, collective progress in the four commissions established to address core issues was painfully slow. A number of informal settlement deadlines passed as progress in the commissions on the Treaty of Trade and Navigation and the Fixing the Common Land Border proved especially difficult. At the same time, the secrecy surrounding the talks predictably contributed to increasingly strident and volatile public and private dialogue as to their content and direction. Even more important, as the negotiations dragged on, tensions on the border increased to the point that armed conflict again became a real possibility. Presidents Mahuad of Ecuador and Fujimori of Peru finally agreed in early October 1998 that the bilateral talks had reached what one Peruvian newspaper described as a *callejón sin salida* or dead end.¹³

Global and Definitive Peace

At this point, the negotiations took a surprising turn. Presidents Mahuad and Fujimori met in the White House with President Bill Clinton on 9 October 1998; and out of this meeting came a suggestion that the guarantors, acting under the provisions of Article 7 of the *Rio Protocol*, propose a final solution to the boundary dispute. The governments of Argentina, Brazil, and Chile subsequently agreed to join the United States, in their collective role as guarantors of the *Rio Protocol*, in proposing a final solution as long as its acceptance was obligatory and accepted in advance by the congresses of Ecuador and Peru. Following the requisite congressional approval, the guarantors announced a global and definitive settlement to the Ecuador-Peru dispute on 26 October 1998 (Figure 4).¹⁴

The global and definitive settlement announced by the guarantors placed the boundary line in the unmarked sector on the summit (*cumbre*) of the Cordillera del Cóndor and provided for its demarcation by 23 *hitos* or boundary markers (Article 1). In support of this decision, the guarantors cited the *Rio Protocol* and the award of Captain Braz Dias de Aguiar. The agreement also provided for the creation of two “environmental

Figure 4



protection” areas or national parks in the frontier zone, under the sovereignty and jurisdiction of the respective states (Article 7).

These contiguous ecological zones were to bear the same name and coincide with the newly-demarcated sector of the common border. In the course of the substantive negotiations, a bi-national park in the frontier zone had been a highly controversial issue as at least one proposal called for joint sovereignty over any park or parks in the frontier zone, a concept unacceptable to Peru. The agreement also accorded members of the native communities in the

region free passage from one ecological zone to the other. Finally, the guarantors awarded Ecuador one square kilometre of ground in Peruvian territory on the point designated as Tiwinza (Tiwintza), the site of heavy fighting in 1995 (Article 2). This transfer of land was not to entail any “consequences as to sovereignty” with Ecuador enjoying real title conferred under national Peruvian private legislation, except the right to transfer the property. Ecuadorian nationals were to enjoy free right of passage along a single, public road, up to five metres wide, connecting the transferred property with the territory of Ecuador.¹⁵

In addition to delimiting the land boundary in the Cordillera del Cóndor, as well as in the Lagartococha-Güepi sector and the Cusumaza-Bumbuiza / Yaupi-Santiago sector, the global and definitive settlement proposed by the guarantors called on Ecuador and Peru to formalise a number of outstanding draft treaties and agreements. These included a *Treaty of Trade and Navigation* and a *Treaty of Frontier Integration* plus an interchange of diplomatic notes on the Zarumilla Canal, Napo River, and the creation of a Bi-national Commission on Mutual Confidence and Security. The terms of the *Treaty of Trade and Navigation* addressed the provisions in Article 6 of the *Rio Protocol* which called for Ecuador to enjoy free and untrammelled navigation on the Amazon and its northern tributaries.

In the pact, Peru granted Ecuador free, continuous, and perpetual access to the Amazon River (Articles 1 and 2); and in addition, the agreement provided for the establishment of two Ecuadorian centres for trade and navigation capable of processing goods and re-exporting products (Article 22). Located on the banks of the Marañón River under a 50 year lease, each of these 150 hectare centres will be managed by private companies designated by Ecuador but registered in Peru (Article 25). The draft treaties and agreements become fully operational as soon as the boundaries delimited in the global and definitive settlement are demarcated.¹⁶

On 25 October 1998, the Interamerican Development Bank announced a US\$500 million loan for economic and social development in the frontier zone. This was the first instalment in a US\$3 billion international commitment to develop the Ecuador-Peru borderlands. While there was some opposition to the agreements in the Amazon region of Peru, the Peruvian congress approved the *Treaty of Frontier Integration* and the *Treaty of Trade and Navigation*, the only two draft agreements requiring congressional approval in Peru, by a wide margin in mid-November 1998. The Ecuadorian congress approved the *Treaty of Frontier Integration* later in the month, deferring approval of the *Treaty of Trade and Navigation* to the executive branch.

Although the rainy season commenced in the Cordillera del Cóndor in November 1998, officials expect all boundary markers to be in place within six months from the conclusion of the *Brasilia Agreements*. Ecuador is expected to construct most of the boundary markers while Peru will provide the helicopters to put them in place. Mine clearing in

the border zone will be accomplished in two phases with the first phase focused on demining the immediate areas around the sites of the new boundary markers. Both Ecuador and Peru want the boundary markers in place as soon as possible so that all components of the *Brasilia Agreements* can be fully implemented.¹⁷

Conclusions

The *Brasilia Agreements* mark the end of the oldest continuous boundary dispute in the western hemisphere. The origins of the Ecuador-Peru dispute predated Peru's declaration of independence in 1821 and Ecuador's split from Gran Colombia in 1830. Over the long history of the dispute, third party involvement often complicated attempts at resolution; therefore, it is noteworthy that the guarantors of the *Rio Protocol* played an important role in bringing the peace process to a successful conclusion.

While the *Brasilia Agreements* have ended a long-term bilateral dispute, they have also initiated an important new beginning in the diplomatic and commercial relations of Ecuador and Peru. In addition to the final demarcation of the boundary between the two states, the package of accords provides for some US\$3 billion in grants, loans, and investment in the Ecuador-Peru borderlands. In consequence, the real hope and promise of the *Brasilia Agreements* is for sustained bilateral and multilateral trade and development in an environment of peace and security.

Notes

- ¹ For the historical background to the Ecuador-Peru boundary dispute, see St John, R.B. (1994) *The Boundary between Ecuador and Peru*, Boundary and Territory Briefing 1, 4, Durham:International Boundaries Research Unit.
- ² For an English language translation of the Rio Protocol, see Zook, D.H. Jr. (1964) *Zarumilla-Marañón: The Ecuador-Peru Dispute*, New York: Bookman Associates: 302-305.
- ³ Palmer, D.S. (forthcoming) 'The Search for Conflict Resolution: The Guarantors and the Peace Process in the Ecuador-Peru Dispute', in Downes, R. and Marcella, G. (eds) *Security Cooperation in the Americas: Lessons from the 1995 Ecuador-Peru Conflict*, Miami: North-South Center Press: 1-6.
- ⁴ St John, R.B. (1998) 'Ecuador-Peru Relations Viewed from Outside', Paper delivered at *Ecuador-Perú bajo un mismo sol* seminar, Quito, Ecuador, 19 October: 10-11.

- ⁵ McCutchen McBride, G. (1949) *Ecuador-Peru Boundary Settlement: Report to the Secretary of State*, Typescript copy of unpublished report to the US Secretary of State, Washington, D.C.: Chapter IV, 55; Krieg, W.L. (1986) *Ecuadorean-Peruvian Rivalry in the Upper Amazon (Enlarged to Include the Paquisha Incident, 1981)*, 2nd ed., Washington, D.C.: U.S. Department of State: 130.
- ⁶ Tobar Donoso, J. and Luna Tobar, A. (1994) *Derecho Territorial Ecuatoriano*, 4th ed., Quito: Imprenta del Ministerio de Relaciones Exteriores: 274-286; Maier, G. (1966) 'The Impact of Velasquismo on the Ecuadorean Political System', Ph.D. dissertation, Southern Illinois University: 225; Pons Muzzo, G. (1994) *Estudio Histórico sobre el Protocolo de Río de Janeiro*, Lima: n.p.: 256-270.
- ⁷ St John, R.B. (1996) 'Conflict in the Cordillera del Cóndor: The Ecuador-Peru Dispute', *Boundary and Security Bulletin*, 4, 1 (Spring), Durham: International Boundaries Research Unit: 81-83; Bákula, J.M. (1992) *Perü y Ecuador: Tiempos y testimonios de una vecindad*, vol. III, Lima: Centro Peruano de Estudios Internacionales: 407-431; Bustamante, A.L. (1997) *El Problema Territorial con el Perú desde la Perspectiva Diplomática*, Quito: Artes Gráficas Señal Impreseñal Cía. Ltda: 82-112.
- ⁸ A copy of the *Declaración del Paz de Itamaraty entre Ecuador y Perú* can be found in Ministerio de Relaciones Exteriores del Ecuador (1997) *Paz con dignidad: Documentos del problema territorial Ecuatoriano-Peruano*, Quito: Imprenta del Ministerio de Relaciones Exteriores: 54-57; Marcelo Fernández de Córdoba P. (1998) *Itamaraty: seiscientos veintisiete días por la paz*, Quito: V & O Gráficas.
- ⁹ The author has adopted David Scott Palmer's translation of "impasses subsistentes", an apparent linguistic innovation on the part of the guarantors in the *Itamaraty Peace Declaration* to assist Ecuador and Peru to go beyond the legalisms of individual interpretations. Palmer, D.S. (1997) 'Peru-Ecuador Border Conflict: Missed Opportunities, Misplaced Nationalism, and Multilateral Peacekeeping', *Journal of Interamerican Studies and World Affairs*, 39, 3 (Fall): 126.
- ¹⁰ For a more detailed discussion of these substantive differences, see Thomas, B.L. (1997) 'Ecuador and Peru Discuss Border Impasses', *Boundary and Security Bulletin*, 5, 2 (Summer), Durham: International Boundaries Research unit: 69-71.
- ¹¹ The Peruvian government sought to strengthen its case with the publication of the Braz Dias de Aguiar award. Ministerio de Relaciones Exteriores del Perú (1996) *Frontera Peruano-Ecuatoriana: El Laudo Arbitral de Braz Dias de Aguiar Repertoria Documental*, Lima: Metrocolor S.A.. See the author's review essay of this publication in *Boundary and Security Bulletin*, 5, 1 (Spring), Durham: International Boundaries Research Unit: 96-100.
- ¹² 'Talks timetable agreed', *Financial Times*, 21 January 1998.
- ¹³ *El Comercio* (Quito), 6 October 1998; *El Comercio* (Lima), 5 October 1998.
- ¹⁴ *El Comercio* (Quito), 11 October 1998; *El Comercio* (Lima), 11 October 1998; 'Peru and Ecuador Sign Treaty To End Longstanding Conflict', *The New York Times*, 27 October 1998; 'Sometimes bloody border dispute comes to peaceful end', *The Herald* (Miami), 27 October 1998.
- ¹⁵ *Acta Presidencial de Brasilia* (26 October 1998); *Respuesta de los Países Garantes y Croquis* (26 October 1998). For an English language translation of the operative part of the global and definitive agreement presented by the guarantors, see Embassy of Peru, 'Text of the Operative Part of the Global and Definitive Agreement Presented by the Guarantor Countries', *Peru Newsletter*, Washington, D.C., October 1998: 1-2.
- ¹⁶ *Tratado de Comercio y Navegación entre los Gobiernos de la República del Perú y la República del Ecuador* (26 October 1998); *Acuerdo Amplio Peruano-Ecuatoriano de Integración Fronteriza, Desarrollo y Vecindad* (26 October 1998); *Convenio de Aceleración y Profundización del Libre Comercio entre el Perú y el Ecuador* (26 October 1998); *Intercambio de Notas Río Napo* (26 October 1998); *Intercambio de Notas Canal de Zarumilla* (26 October 1998); *Intercambio de Notas del Acuerdo de Constitución de la Comisión Binacional Peruano-Ecuatoriana sobre Medidas de Confianza Mutua y de Seguridad* (26 October 1998).
- ¹⁷ *Diario Expresso* (Quito), 18 November 1998; *El Comercio* (Lima), 26 October, 5 November and 14 November 1998.

Dr Ronald Bruce St John first visited Ecuador and Peru in 1968 and has been a regular commentator on Andean affairs since that time. His recent publications include 'Conflicto Ecuador-Perü visto desde afuera', in *Ecuador-Perü bajo un mismo sol* (1999), 'Peru: Atypical External Behavior', in *Foreign Policy and Regionalism in the Americas* (1996), *The Boundary between Ecuador and Peru*, *Boundary and Territory Briefing* 1, 4, Durham: International Boundaries Research Unit (1994), and *The Foreign Policy of Peru* (Lynne Rienner, 1992). An updated, Spanish language, edition of *The Foreign Policy of Peru* will be published in Lima in 1999.